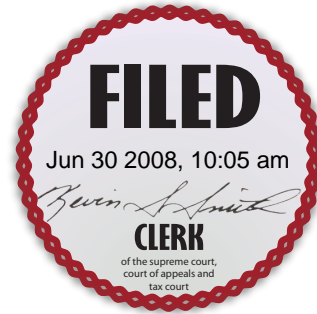


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN H. REDMOND,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 82A01-0712-CR-567
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable David D. Keily, Judge
Cause No. 82C01-0605-FD-546

JUNE 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant John H. Redmond appeals the trial court's denial of his petition for permission to file belated appeal.

We affirm.

ISSUE

Redmond presents one issue for our review which we restate as: whether the trial court erred by denying Redmond's petition for permission to file a belated appeal.

FACTS AND PROCEDURAL HISTORY

In May 2006, Redmond was charged with failure to return to lawful detention as a D felony. *See* Ind. Code § 35-44-3-5(c). On October 16, 2006, he pleaded guilty to this charge and was sentenced to two years executed on November 30, 2006. Subsequently, on June 22, 2007, Redmond, *pro se*, filed his petition for post-conviction relief. On August 10, 2007, Redmond filed an amended petition for post-conviction relief, and, on September 18, 2007, he filed a motion to withdraw his petition for post-conviction relief as well as a petition entitled "Verified Petition for Belated Appeal." The court denied Redmond's requests, and this appeal ensued.

DISCUSSION AND DECISION

Redmond's sole issue on appeal is the propriety of the trial court's denial of his petition to file a belated appeal. Redmond, however, has waived appellate review of this issue because he has failed to develop a cogent argument. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*; Ind. Appellate Rule 46(A)(8)(a). Here, Redmond's entire argument section consists of his bald assertion that he exercised due

diligence and that the trial court “should have noticed that [he] was in ongoing processes with his case.” Appellant’s Brief at 7. He cites Ind. Post-Conviction Rule 2 and a single case but presents no argument or application to the facts of this case. We will not address arguments that are improperly expressed or too poorly developed to be understood. *Barrett v. State*, 837 N.E.2d 1022, 1030 (Ind. Ct. App. 2005), *trans. denied*.

Additionally, Redmond cannot take refuge in the sanctuary of his amateur status. As we have noted many times before, a litigant who chooses to proceed *pro se* will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his action. *Smith*, 822 N.E.2d at 203. Thus, Redmond has waived this issue.

Waiver notwithstanding, Redmond’s appeal fails. Ind. Post-Conviction Rule 2 provides that a petition for permission to file a belated notice of appeal may be filed with the trial court where the failure to file a timely notice of appeal was not due to the fault of the defendant, and the defendant has been diligent in requesting permission to file a belated notice of appeal. A trial court’s ruling on a petition pursuant to Post-Conviction Rule 2 should be affirmed unless it was based on an error of law or a clearly erroneous factual determination (i.e., an abuse of discretion). *Bosley v. State*, 871 N.E.2d 999, 1002 (Ind. Ct. App. 2007).

The burden is upon the defendant to prove by a preponderance of the evidence that he was without fault in the delay of filing and was diligent in pursuing permission to file a belated appeal. *Moshenek v. State*, 868 N.E.2d 419, 422-23 (Ind. 2007), *reh’g denied*. In determining whether the defendant has met this burden, the court looks to several

factors including, the defendant's level of awareness of his procedural remedy, age, education, familiarity with the legal system, whether the defendant was informed of his appellate rights, and whether he committed an act or omission which contributed to the delay. *Id.* at 423.

In general, the determination of whether a defendant is responsible for the delay is a matter within the trial court's discretion, to which we defer. *Baysinger v. State*, 835 N.E.2d 223, 224 (Ind. Ct. App. 2005). However, when, as in the present case, the trial court does not hold a hearing before denying defendant's petition, the only bases for the trial court's decision are the allegations set forth in the petition. In such an instance, we are reviewing the same information as the trial court, and we owe no deference to its findings; therefore, we review the trial court's decision *de novo*. *Id.*

Redmond's petition states that he was unaware of the procedure of direct appeal because he did not have an attorney to help him. We note, however, that the chronological case summary (CCS) entry for June 22, 2007, states that Redmond filed his petition for post-conviction relief and indicated that he did not want to have the public defender's office represent him. This was the first filing on Redmond's behalf following his sentencing. Further, in support of his exercise of due diligence, he states in his petition that he was reluctant to find out about the appeal process. These statements provide no evidence to support Redmond's petition. Without any evidence regarding the elements of P-C.R. 2(1), a petitioner cannot have met his burden of proof. *Townsend v. State*, 843 N.E.2d 972, 975 (Ind. Ct. App. 2006), *trans. denied*.

Furthermore, Redmond provided this Court with only a copy of his petition to file belated appeal and the CCS. It is the appellant's duty to present an adequate record clearly showing the alleged error(s), and failure to do so waives the issue. *Thompson v. State*, 761 N.E.2d 467, 471 (Ind. Ct. App. 2002). As we stated previously, Redmond's self-representation provides him no refuge from the consequences of failing to follow procedural rules. *See Smith*, 822 N.E.2d at 203. Without evidence regarding his diligence and lack of fault, Redmond cannot have met his burden of proof.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that Redmond waived this issue for appeal. Waiver notwithstanding, Redmond failed to meet his burden of proof.

Affirmed.

ROBB, J., and BAILEY, J., concur.